

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 382/SRT/2023 (AY: 2017-18)

(Virtual Hearing)

A.C.I.T., Circle- 2(1)(1), Surat.	Vs.	Manish Sumatilal Shah, 401, 4 th Floor, South Ridge Road, Mumbai-400006. PAN No. ADRPS 1088 E
Appellant/ Respondent		Respondent/ Assessee

Department represented by	Shri Ritesh Mishra, CIT-DR
Assessee represented by	Shri Biren Shah, A.R.
Date of Institution of Appeal	29/05/2023
Date of hearing	03/10/2023
Date of pronouncement	04/10/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned National Faceless Appeal Centre, Delhi (in short, the NFAC)/ Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 30/03/2023 for the Assessment Year (AY) 2017-18. The Revenue has raised following grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction of Rs. 7,19,08,850/- u/s 54F of the Act made by the AO without appreciating the facts of the case that the assessee failed to fulfil the conditions as prescribed u/s 54F of the Income Tax Act.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition without appreciating the facts of the case that the assessee has failed to substantiate his claim by not furnishing the details during the course of assessment proceedings.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition without appreciating the facts that during the course of assessment proceedings the assessee was provided adequate opportunities and admission of additional evidences without providing any opportunity to the AO resulted in violation of Rule 46A of I.T. Rules.*
4. *On the basis of the facts and circumstances of the case and in law, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.*
5. *It is therefore prayed that the order of Id. CIT(A) may kindly be set aside that of the Assessing officer be restored.*

The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal.”

2. Brief facts of the case are that the assessee is an individual, filed his return of income for the A.Y. 2017-18 on 29/01/2018 declaring total income of Rs. 72,63,050/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that in the computation of total income, the assessee has shown long term capital gain of Rs. 7.19 crores and claimed deduction of entire amount under Section 54F of the Income Tax Act, 1961 (in short, the Act). The assessee was asked to furnish details of residential unit against which deduction was claimed under Section 54F of the Act. The Assessing Officer recorded that the assessee furnished required details. On verification of such details, the Assessing Officer noted that the assessee has purchased flats at Sagardeep Flats, 52-Ridge Road, Mumbai. The assessee purchased Flats No. 401, 042, 403 and 404 at Sagardeep Flats. To set of registered sale deeds were executed. One set off of document for flat No. 401 and 402 and another document for flat No. 403 and 404 of Sagardeep Flats. The Assessing Officer was of the view that the

assessee can claim deduction on sale of any capital asset, if he purchased a residential property within one year from the transfer of capital asset or within two years after transfer of original capital asset subject to not owning more than one residential property other than new asset, on the date of transfer of original asset. But the assessee purchased four properties, therefore, deduction under Section 54F of the Act is not allowable. The Assessing Officer asked the assessee to furnish reply on or before 18/11/2019. The Assessing Officer recorded that no reply has been received from the assessee, therefore, another opportunity to furnish reply to the show cause notice was given to the assessee by 26/11/2019. The Assessing Officer further recorded that no reply was furnished by assessee. The Assessing Officer passed the assessment order on 26/11/2019 and disallowed the claim of deduction under Section 54F by taking a view that such deduction is not allowable in respect of four residential flats.

3. Aggrieved by the disallowance of deduction under Section 54F/addition of long term capital gain, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The assessee submitted that the assessee earned capital gain at Rs. 7.19 crores and after claiming benefit of Section 54F of the Act, the net capital gain chargeable to tax was worked out at NIL. Entire capital gain was invested on purchase of four flats bearing flats No.

401, 402, 403 and 404, situated at 4th floor of complex known as "Sagardeep Flats", Ridge Road, Malabar Hills, Mumbai. During the assessment, the Assessing Officer called the assessee to explain the claim of deduction on the ground that as per provisions of Section 54F of the Act, investment in only one residential unit was allowable and not for four units. The Assessing Officer mentioned that the assessee did not file any reply and denied the benefit of Section 54F of the Act. The assessee further explained that the factual position is not in dispute. The crucial fact is that the assessee for the need of his family required a larger residential house and he deliberately acquired four flats on the same floor of the complex and all these flats are adjoining with common walls. These four flats were converted into one residential house by architectural changes only with one entrance and kitchen. Thus, for all practical purposes, four flats are in fact one residential house which is exclusively used for the residence of assessee and his family. In the return of income filed for A.Y. 2017-18, 2018-19 and 2019-20, the assessee has shown his address as 401-404, Sagardeep Building, 52, Ridge road, Malabar Hills, Mumbai, Maharashtra which proves the capital gain invested by assessee on acquiring on one residential house. The assessee submitted that he acquired a bigger accommodation so purchased four flats which was converted into one residential house.

4. The assessee also made prayer for furnishing documentary evidence to support the aforesaid factual position by filing application under Rule 46A of the Income Tax Rules, 1961 (in short, the Rules). To support his submission, the assessee relied upon various decisions of Hon'ble High Courts and Tribunal including the decisions in Smt. B.S. Shanthakumari (2015) 60 taxmann.com 74 (Kar), CIT Vs. Sambandam Udaykumar (2012) 345 ITR 389 (Kar), CIT Vs Syed Ali Adil (2013) 352 ITR 418 (AP), CIT Vs Gita Duggal (2013) 357 ITR 153 (Delhi). The assessee again along with his submission, filed application under Rule 46A of the Rules and also furnished copy of registered sale deeds of flats, floor plan drawing showing that all four units are amalgamated together to form one residential unit, photograph of the flats showing that only one residential unit exists on the 4th floor, certificate of Chairman of society certifying that one residential unit exist at site and certificate of architect showing the details of expenditure. On the basis of such evidences, the assessee submitted that all four units are adjacent unit and 'one residential house' and same is being used a single residential unit, common passage and one kitchen and had considered as single residential unit. The assessee further explained that exemption under Section 54 of the Act cannot be denied merely because the assessee entered into two different agreements from two different parties as mere execution of different sale deeds in respect of

two different portions of the property did not materially affect the nature of transaction or the nature of property acquired as the property in question was deemed used by assessee as one residential house with single entrance and common kitchen for own purpose. To support such view, the assessee relied upon the decision of Jaipur Tribunal in ITA No. 51/JP/2016 dated 03/01/2020 and decision of Ahmedabad Tribunal in Mohammadanif Sultanali Pradhan Vs DCIT (2020) 114 taxmann.com 508 (Ahd-Trib), Bangalore Tribunal in Halesh K.C. Vs ITO ITA No. 194/Bang/2020 dated 24/02/2021, Shri Bhatkal Ramarao Prakash Vs ITO ITA No. 2692/Bang/2018 dated 04/01/2019, Madras High Court in PCIT Vs Abhijit Bhandari (2019) 108 taxmann.com 120 and various other decisions.

5. The Id. CIT(A) after considering the submission of assessee noted that the main point in dispute is whether the benefit of Section 54F is available to assessee on purchase of four flats. The Assessing Officer denied such benefit by holding that the assessee invested capital gain in more than one residential house. On the other hand, the contentions of assessee are that these four flats have been combined into one and having one entrance and one kitchen thereby making it into one residential house. The Id. CIT(A) after considering the registered sale deeds, floor plan of all four units which are amalgamated together to form one residential unit, photographs, certificate of Chairman of

society where the residential unit exists and certificate of architect recorded that on perusal of such record, it is seen that all four units have been combined into one unit. The Id CIT(A) noted that on identical issue Ahmedabad Tribunal in case of Mohammadanif Sultanali Pradhan Vs DCIT (supra) wherein two units bearing separate numbers were purchased by assessee on investing long term capital gain, both the units were adjacent to each other and were used as a single residential unit and such issue was decided in favour of that assessee. It was also held that under the provisions of Act, there is no definition/clarification provided about the area of residential property which means one assessee can buy huge property and can claim deduction subject to the conditions. The assessee in that case had acquired two different properties adjacent to each other but both are put together as only 200 square meter but he will be extended the benefit of exemption with respect to one unit only because of reason that there are two different properties based on registered document. The Tribunal ultimately held that the assessee cannot be deprived of benefit conferred under the statute merely on the reasoning that there were two different registries of building. By following such judicial precedence, the Id CIT(A) held the assessee as eligible for exemption under Section 54F of the Act and thereby allowed full relief to the assessee. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before the Tribunal.

6. We have heard the rival contentions of the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee and have perused the orders of the lower authorities carefully. The Id CIT-DR for the revenue submits that during the year under consideration, the assessee has shown long term capital gain and claimed exemption thereof on investing for purchase of four residential units. The assessee purchased all four residential units by way of two set of registered sale deeds, one in respect of flat No. 401 and 402 and second in respect of flat No. 403 and 404. During the assessment, the Assessing Officer required details for substantiating deduction in respect of four residential units. The Assessing Officer has given more than eight opportunities, however, complete details were not furnished by the assessee. The Assessing Officer given final show cause as recorded in para 4.3. The Assessing Officer in absence of complete details, made addition of capital gain by disallowing deduction under Section 54F of the Act. Before the Id. CIT(A), the assessee filed application under Rule 46A of the Rules. The Id. CIT(A) accepted the explanation furnished by assessee and the additional evidence furnished by assessee. No remand report on such additional evidence was sought from Assessing Officer. The Assessing Officer was not given any opportunity to make comment on additional evidence. The assessee has not disclosed any

ground for not furnishing such evidence before the Assessing Officer. The Id. CIT(A) violated the principle of natural justice in not allowing the opportunity to the Assessing Officer to make his comment. The Id. CIT(A) wrongly allowed deduction in respect of four residential units. The Id. CIT-DR for the revenue submits that the order of Id. CIT(A) may be reversed by restoring the order of Assessing Officer.

7. In alternative submission, the Id. CIT-DR for the revenue submits that the matter may be restored back to the file of Id. CIT(A) with the direction to given liberty to the Assessing Officer to make comment on the additional evidence which was accepted in utter violation of conditions of Rule 46A of the Rules. The Id. CIT-DR for the revenue submits that the Id. CIT(A) was the second facts finding authority and not appreciated the fact in right perspective. The Tribunal is the final fact finding authority and if the facts are not considered properly by lower authorities, the Tribunal either may restore the order of Assessing Officer or give direction to the lower authorities to appreciate the fact in a proper way and pass the order afresh.
8. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that in para 4 of assessment order, the Assessing Officer recorded that the assessee was asked to furnish the details on which deduction under Section 54F is claimed. The Assessing Officer further noted that the assessee

submitted the details. Further in para 4.1 of assessment order, the Assessing Officer clearly recorded that on verification of all details submitted by assessee, the Assessing Officer noted that the assessee purchased flat No. 401, 401, 403 and 404. Further it is clearly recorded that two registered documents for purchase of said flats were executed. Thus, the assessee furnished complete and required details. The Assessing Officer completed assessment under Section 143(3) of the Act. It is not the case of Assessing officer that he completed best judgement assessment in absence of any detail. The Assessing Officer failed to appreciate the fact that all four residential units were purchased together to make a big residential unit. Before the Id. CIT(A), the assessee explained the fact and reiterated the contention that there is single entrance and only one kitchen in all four residential units. To substantiate such fact, the assessee furnished certain more details in the form of floor plan and drawing to substantiate that all four units are merged/amalgamated to form one residential unit, photograph of flat, certificate of chairman of society and certificate of architect. The Id. CIT(A) on considering and appreciating of such fact, accepted the plea of assessee. The Id. AR of the assessee submits that there was no violation of Rule 46A while accepting the additional evidence by the Id. CIT(A). The Id. CIT(A) while granting relief to the assessee, considered various decisions of superior courts/High Courts and order of Tribunal

and accepted the fact that all four units makes a single residential unit. The Id. AR of the assessee submits that the Id. CIT(A) granted relief to the assessee on appreciated the complete facts. To support his submission, the Id. AR of the assessee relied upon all the decisions which was relied before the Id. CIT(A). More specifically the decision of Hon'ble Delhi High Court in CIT Vs. Gita Duggal (supra) and the decision of Ahmedabad Tribunal in Mohammadanif Sultanali Pradhan Vs DCIT (supra). Hon'ble Delhi High Court in CIT Vs Gita Duggal (supra), held that several independent units cannot be permitted to act as impediment to the allowance of the deduction under section 54 of section 54F as there is no prohibitions. Further, it is not necessary in each case to seek the remand report from the assessing officer, even if the evidence is file for the first time, if it speak itself.

9. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on various case laws relied upon by the lower authorities as well as by the Id. AR of the assessee. There is no dispute that the assessee earned long term capital gain during the impugned financial year. Further, there is no dispute that the assessee invested entire capital gain for purchase of flat No. 401 to 404 of Sagardeep Flats, Ridge Road, Malabar Hills, Mumbai. The Assessing Officer disallowed the deduction under Section 54F by taking a view that the

assessee is eligible for claim of deduction under Section 54F of the Act in respect of one residential house. Before the Id. CIT(A), the assessee submitted that all four residential flats are a single residential house. All four flats were merged together and having one entrance and single kitchen. To substantiate such fact, the assessee furnished floor plan with their drawing after amalgamating into one residential unit, photograph thereof, certificate of Chairman of society and certificate of architect about the details of expenditure for such amalgamation. The Id. CIT(A) on appreciation of such fact and by referring the decision of Ahmedabad Tribunal in the case of Mohammadanif Sultanali Pradhan Vs DCIT (supra) granted full relief to the assessee by treating all flats as one residential house.

10. We find that Hon'ble Delhi High Court in CIT Vs Gita Duggal (supra) held that merely because a residential house consists of several independent residential units it would not take away deduction under section 54 or 54F. Further, Special Leave Petition filed by the revenue was also dismissed by Hon'ble Apex Court vide (2014) 52 taxmann.com 246-SC. Further, Hon'ble Karnataka High Court in Arun K Thiagraja Vs CIT (2020) 117 taxmann.com 270 (Kar) also held that for the purpose of allowing benefit of deduction under section 54(1), expression 'a residential house' includes within its ambit plural numbers as well and, thus, it cannot be construed as one residential house only. Andhra

Pradesh High Court in CIT Vs Syed Ali Adil (2013) 352 ITR 418(AP)/ 33 taxmann.com 212(AP) also held exemption under section 54 cannot be denied, where residential house property purchased by assessee consists of several independent units. Thus, in view of the aforesaid factual and legal discussions, we find that the Id CIT(A) while granting relief to the assessee has not committed any error on facts and law. No contrary fact or law is brought to our notice to take other view.

11. Before us, the Id. CIT-DR for the revenue raised objection that the Id. CIT(A) accepted the submission of assessee and additional evidence without giving opportunity to Assessing Officer to counter such additional evidence filed for the first time. We find that Section 250 of the Act deals with the procedure in appeal before Id. CIT(A). Sub-section (4) of Section 250 deals with specific procedure, that CIT(A) before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to him. Further sub-Section (5) of Section 250 deals with the situation that while hearing of appeal, the CIT(A) may allow admission to go into any ground of appeal not specified in the grounds of appeal if he is satisfied that omission of that ground from the form of appeal was not willful or unreasonable. On careful reading of sub-Section (4) of Section 250 of the Act, we find that it is

not necessary for the Id. CIT(A) to seek report of Assessing Officer on each and every submission or explanation furnished by assessee.

12. In view of the aforesaid factual and legal discussions, we do not find any infirmity or reason to interfere with the order of Id CIT(A), which we affirm. In the result, the grounds of appeal raised by the revenue are dismissed.

13. In the result, this appeal of revenue is dismissed.

Order announced in open court on 04 October, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 04/10/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

// True Copy //

By order

Sr. Private Secretary, ITAT, Surat